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Child Support Payor's Legal Fees Deductible: TCC

The Tax Court of Canada allowed a child support payor who had joint custody to claim a tax deduction for legal fees incurred in seeking child support in [Trignani v. The Queen](#), 2010 TCC 209. The court rejected both arguments put forward by the Minister of National Revenue that the appellant's pre-existing right to child support had been extinguished by an earlier consent order requiring him to pay support and that he had abandoned his claim for child support. The court found that the "legislative obligation to support children does not cease with a court order, and especially a court order providing for interim support only." It also found no evidence that the appellant had abandoned his claim before the relevant legal services were provided.

Order to Pay 15 Years of Arrears a "Windfall Benefit" for Non-Disclosing Payor: Ont. SCJ

In [S.P. v. R.P.](#), 2010 ONSC 2247, a father who "effectively abandoned...expected parental responsibilities" and failed to provide full financial disclosure during negotiations or afterward, was ordered to pay \$463,000 arrears accumulated over a 15-year period. Rejecting the respondent's argument that the claim for arrears should not be applied retrospectively beyond three years, the court said: "there is no such time limit where the party obliged to pay support has...failed to disclose a material change in his circumstances in order to avoid the risk of being required to pay increased support." The court also took the unusual step of imputing income to the respondent, a chartered accountant, for valuable income tax benefits he gained by donating rare books. The court found the grossed up value of those benefits plus income received from undisclosed dividends and stock options to be \$762,000. The court described the award as a

"windfall benefit" to the respondent, since he would have had to pay significantly more arrears had the mother not waited too long to make a claim for two older children who were no longer "children of the marriage." Not surprisingly, the decision will be appealed, as noted in the following article:

- [Dad's income grossed up to include tax write-offs](#) *Lawyers Weekly*, May 28 2010.

Applying the Cliff Effect in a Shared Parenting Regime: MBQB

In [Campbell v. Campbell](#), 2010 MBQB 107, the court applies the principles enunciated by the Supreme Court of Canada in [Contino v. Leonelli-Contino](#), 2005 SCC 63 to an application for relief based solely on the changes in the respective financial positions of the parties. The parties had shared parenting since separation, with the father paying \$750 support per month. He applied for a variation due to a reduction in income. Despite finding the income levels and standard of living of the parties to be equal, the court ordered the father to pay \$300 per month, presumably to alleviate the cliff effect.

Difficult Mobility Cases Turn on Facts: MBQB

Two recent mobility rights cases, [Inscho v. Inscho](#), 2010 MBQB 90 and [Beech v. Pearce](#), 2010 MBQB 99, illustrate the difficult balancing act involved in assessing whether to permit a parent to relocate with the children away from the other parent. In both cases the mother intended to move with the children to Ontario, contrary to the fathers' wishes. In one case (*Inscho*) the mother was successful, in the other case not. As noted by Justice Yard in *Inscho*,

...mobility cases such as this are the most difficult variety of cases which judges and courts are called upon to address. This is so because the outcome of the case will almost invariably shatter the hopes and dreams of one or other of the parents and perhaps others in the extended family as well. Yet these considerations must all be put aside in favour of an examination of the best interests of the children as opposed to the hopes, dreams, wishes and views of the adults. (para. 109)

Getting Tough on Support Payment Debtors

[Bill 30](#), *The Strengthened Enforcement of Family Support Payments and Miscellaneous Amendments Act (Various Acts Amended)*, introduced April 28, 2010, amends Part VI of *The Family Maintenance Act* and other related Acts to enhance enforcement of support payments and to allow for a new computer system. Among other things, the amendments would increase the maximum fine to \$10,000 and boost jail time to up to 200 days for those wilfully in default; penalize those who are late with payments; and charge debtors with the cost of enforcement actions. In addition, the court would have the authority to order genetic testing to determine parentage and the child support service could recalculate a child support order on the basis of deemed financial information.

Divorce and Maintenance Enforcement Statistics

The Spring 2010 issue of the Statistics Canada periodical [Juristat](#) contains two articles that may be of interest to family law lawyers. [The processing of divorce cases through civil court in seven provinces and territories](#) examines statistics pertaining to divorce court cases in seven provinces (not including Manitoba), including the volume of cases, the types of court activity associated with the cases, and the length of time taken to process and reach decisions. [Maintenance enforcement by neighbourhood income in seven reporting census metropolitan areas](#) uses recent data from maintenance enforcement program surveys to compare the characteristics of

families from low and high income areas who are enrolled in such programs.

Recommended Reading

The following three articles can be downloaded free from BC CLE's [Practice Points](#):

- [Child Protection Mediation: A Mediator's Perspective](#) by Colleen J. Cattell, Q.C. discusses the advantages of mediation in child protection matters, the different models of mediation, and the parties' and lawyers' roles as problem-solvers.
- [Professional Liability and Professional Responsibility In and Out of the Courtroom](#) by Leslie J. Muir examines how the actions of counsel can attract allegations of professional liability (negligence, breach of fiduciary duties) and professional responsibility complaints. The author gives tips on how to stay out of trouble and what to do if you have made a mistake.
- [Risk Management Tips for Family Law Lawyers](#), by Megan Swail, a Lawyers Insurance Fund take on how to avoid claims and complaints.

Continuing Professional Development: LSM

The first CPD session at this year's Northern Bar Association annual meeting deals with [Tough Procedural Issues in the North in Family Law Matters](#). The session starts at 10:30 a.m. on June 11, 2010 at the Flin Flon Courthouse. Separate [registration](#) is required for the program.

National Family Law Program: FLSC

There is still time to register for the 2010 National Family Law Program, to be held July 12-15 in Victoria, B.C. The [brochure](#) contains a list of topics to be covered and the registration form, and updates will be posted on the [FLSC website](#).

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